

**HAMPTON MUNICIPAL BUDGET COMMITTEE  
MINUTES**

**May 17, 2016**

**7:00PM**

**Hampton Town Hall, 100 Winnacunnet Road, Basement Meeting Room**

**Attendance**

Nicholas Bridle, Chairman  
Michael Plouffe, Vice Chairman  
Regina Barnes, Selectman Representative  
Virginia Bridle, School Board Representative SAU 90  
Michael Pierce  
Brian Lapham  
Timothy "Citizen" Jones  
Stephen LaBranche  
Danielle Augustine  
Steve Henderson  
Mary-Louise Woolsey

**Absent (excused)**

Robert Ladd, Hampton Beach Village District Representative

**Absent (unexcused)**

Sunny Kravitz

- I. Call to order by Chairman Bridle at 7:00pm
- II. Pledge of Allegiance  
  
Moment of silence for Kyle Jameson
- III. Roll call / Introduction of Present Members
- IV. NHMA Presentation – Stephen Buckley & Margaret Burns

Chairman Bridle said the NHMA is here to give a budget presentation, about the municipal budget process.

Mr. Buckley said they would be covering the Right-to-Know Law, General Principles, Key Budget Concepts, the Budget Committee and Fund Source.

**The Right-to-Know Law**

- Public Meetings which is a meeting of a public body
- proper notice
- open to the public – RSA 91-A:2
- What is a “Public Body”?  
Any legislative body, governing body, board, commission, etc.; or  
Any committee or subcommittee

Mr. Buckley said not only do you have to give notice of your meetings and let the public attend, but have to keep minutes of your meeting.

- What is a Public Meeting, RSA 91-A:2?

Public Body Quorum  
Matters within its supervision  
In person, telephone or electronic communication

Mr. Buckley said anyone can walk into a public meeting and record and do not need permission; that they can put their recorder on the desk where the board is meeting; they can videotape.

- E-Mail as a meeting?  
No electronic meeting – do not hit reply all  
No “meetings” by email string  
Public bodies may only deliberate in properly held meetings  
May occur accidentally

Mr. Buckley said you should have a procedure rule where if a member needs to participate remotely, that you could adopt a meeting by-law that regulates how someone could do that. You need to be sure there is a quorum present, the member who participates needs to be heard by everyone in room and everything said in the room has to be heard by the person who is participating remotely; all votes by roll call.

- Public meetings, minutes  
Kept and made available upon request within 5 business days  
Include member’s present, people participating, summary of subject matter and decisions reached or action taken

Mr. Buckley said you do not necessarily have a need to approve the minutes by a board, because the idea of a board approving minutes is not in the Right-to-Know Law. The minutes should be produced by staff and then the next meeting available if a board member wishes to amend the meeting minutes, the amendment can be reflected in the meeting minutes of that meeting.

### **General Principles**

- Home Rule? No
- All power comes from legislature.
- Find a law that allows action, either express or necessarily implied.
- Not enough to say “no law says we can’t do it.”  
Girard v. Allenstown, 121 N.H. 268 (1981)
- RSA Chapter 32
- Applies to all towns, school districts and village districts that adopt budgets at annual meeting (including SB 2)
- Towns with charters, add those provisions as well
- Purpose of the Budget Law:  
Uniformity in the manner of appropriating and spending public funds including those towns, school districts and village districts which do not operate with budget committees. RSA 32:1
- Violators may be removed from office, RSA 32:12  
Petition to superior court  
Budget committee or any interested person may initiate  
Removal is not automatic
- DRA can disallow appropriations made in violation of budget law
- Legislative body = town meeting, school district meeting, village district meeting
- Governing body = board of selectmen, school board, village district commissioners
- Budget Committees are not required
- “Official” = adopted by legislative body under RSA 32:14
- “Advisory” = unofficial, established by Selectmen or legislative body but not under RSA 32:14
- Different rules for different stages
- Budget Committee/Governing Body meetings: unlimited number, public meeting rules only (RSA 91-A)
- Budget Hearings: on or before certain dates, 7 days’ notice, limited agenda
- Deliberative Session: date and notice requirements, more limited agenda

#### Seven Key Budget Concepts

- **Appropriations**
- **Gross Basis Budgeting**
- **Warrant Notice**
- **No Spending Without an Appropriation**
- **Lapse of Appropriations**
- **Transfer of Appropriations**
- **10% Limitation**
- **Appropriations**

Key Concept #1

Legislative body policy decision, vote to spend an amount of money for a specified purpose

Authorization to spend money; not the actual spending of money

“Raise” = identify the source of funds

“Appropriate” = set apart a certain sum for a specified purpose

“Purpose” = goal or aim to be accomplished through expenditure of public funds,

RSA 32:3, V

Not limited to MS-636 or MS-737 form

What are “proper public purposes”?

Not necessarily the same this as “public benefit”

General benefit to the public still might not count

Implied authority to appropriate

Incidental private benefit may be legal

    Main purpose-to promote public welfare

    Quid pro quo

    Obligation to benefit municipality

No reimbursement for purely private benefit

    Plowing private roads or driveways?

How specific should warrant articles be?

Voters set policy but may want to leave governing body flexibility re: details

Too specific – may not be able to act

    Ex – specific vendor, model, etc.

    Lease is not the same as purchase

Always state specific amount

**Procedural Requirements:**

    Public budget hearing

    Disclosure of all purposes and amounts

    Gross basis budgeting

    Recommendations

    Warrant notice

    List appropriations on posted budget

**Public budget hearing**

    First hearing at least 25 days before traditional meeting, or on or before 3<sup>rd</sup> Tuesday in January for March SB 2

    Held by official budget committee

    At least 7 days’ notice

    All purposes must be “discussed or disclosed” at a public hearing, whether raised by committee, selectmen or public

    New purposes and additional amounts may be brought up at a hearing

    Budget committee/governing body can take those suggestions or not

    After close of hearing, no new purpose or amount may be added by budget committee/governing body without another hearing

    No increased amounts

    No new subject matter

    Public budget hearing also applies to petitioned articles

Schedule at least one hearing after petitioned article deadline  
Budget Committee finalizes budget after close of last public hearing,  
at a public meeting

**Ultimate budget hearing deadline:**

Posting of budget (at least 14 days before meeting), or  
Forwarding of budget from budget committee to board of  
selectmen (at least 20 days before meeting) RSA 32:16  
In SB2 towns like Hampton budget is posted on or before the  
last Monday in January. RSA 40:13 (II-a) (d)

**Posting of warrant and budget**

Traditional 14 days before meeting  
Include all appropriations  
DRA will invalidate any not listed

- **Gross Basis Budgeting**

Key Concept #2

“To see if the town will vote to raise and appropriate \$25,000 to replace the wooden play structure at the town playground. The total replacement cost is \$35,000, but \$5,000 will be withdrawn from the playground capital reserve fund, and the selectmen have received a commitment for a donation for the remaining \$5,000.”

Problem: Gross amount not appropriated. See RSA 32:5, III

Solution: Change to say “to raise and appropriate \$35,000 to replace the wooden play structure at the town playground. Of this amount, \$5,000 is authorized to be withdrawn from the playground capital reserve fund, \$5,000 anticipated from a private donation, and \$25,000 is to be raised by taxation.” Otherwise, DRA may allow only \$25,000.

“To see if the town will vote to raise and appropriate the amount necessary to buy a 2015 Ford F-350 dump truck from Friendly Ford Sales in Fordham, NH

Problem: Biggest problem is the failure to appropriate a sum certain. See RSA 32:3, I (definition of “appropriate”). Also, designating the exact model of truck and where it must be bought is a bad idea - may eliminate the ability to get a better deal on a different model or from a different seller.

Solution: Include a specific dollar amount. If you can get the truck for less, you don’t have to spend the whole appropriation. If, for some reason, the truck costs more (which shouldn’t happen if you’ve done your research), the town should be able to transfer money from another appropriation. Also, broaden the purpose to allow more flexibility.

“To see if the town will create the position of athletic director to coordinate the activities of the youth athletic leagues. This is a part-time, voluntary position.”

Amendment at town meeting: Change second sentence to read, “This is a part-time position with a salary of \$20,000, which amount is hereby raised and appropriated.”

Problem: Original article is fine (although probably unnecessary – governing body does not need town meeting approval to create a new position), but amendment is invalid – appropriation was not warned.

Solution: If voters want to fund the position, they can amend the operating budget to add \$20,000. Or let the selectmen fund it in existing budget.

### **Special Warrant Articles, RSA 32:3, VI**

Petitioned appropriations articles

Bond issues

\$ into or out of capital reserve or town trust funds

Designated “special,” “non-lapsing,” “non-transferable”

Recommendation(s) required

### **Recommendations**

Optional: numeric tally or recommendations printed in warrant, if authorized by voters or governing body (town, school, village district)

For special and separate appropriations articles

“Budget Committee recommends this article by vote of 9 to 2: Board of Selectmen does not recommend this article by vote of 3 to 2.”

### **Budget Committees**

Official Budget Committee, adopted under RSA 32:14

### **Advisory Committees are allowed**

Elected, or appointed by selectmen

10% limitation does not apply

Governing body’s budget is posted with the warrant

### **Duties of Budget Committee**

Review current year’s expenditures for perspective on budget preparation

Review proposals of governing body

Prepare budget

Schedule and hold budget hearings

Forward final proposed budget to governing body for posting with warrant

### **Budget Preparation**

All municipal officers, administrative officials, department heads shall prepare statements of estimated expenditures and revenues for the ensuing fiscal year.

There must be submitted, at such times and in such detail as the governing body may require. RSA 32:4

### **Relationship between Budget Committee and Town Manager**

Town Manager has control and supervision over police, fire, public works, parks and recreation, cemeteries, etc. 37:6 (V)  
Town Manager can be the conduit for transmitting information from Department heads to Budget Committee  
Budget Committee inquiries should not interrupt normal operations of town departments

### **Budget Transfer Information**

Governing body may transfer to an appropriation an unexpended balance remaining in some other appropriation.

Records shall be kept by the governing body, such that the budget committee, may ascertain the purposes of appropriations to which, and from which, amounts have been transferred; provided, however, that the budget committee *does not* have any authority to dispute or challenge such transfers. RSA 32:10 (I).

### **Limitation on Appropriations**

In any municipality electing RSA Chapter 32 the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting

The 10 percent increase allowable shall be computed on the total amount recommended by the budget committee less fixed charges: bonds, and all interest and principal payments; notes, except tax anticipation notes, and all interest and principal payments thereon; mandatory assessments imposed on towns by the county, state or federal governments. RSA 32:18.

### **What Else Goes on Ballot?**

Only those things required or permitted by law, nothing extra

Actual question, recommendations

Estimated tax impact, RSA 32:5, V-b

If adopted by legislative body

On operating budget and all special articles with a tax impact, as determined by governing body

Estimate subject to governing body approval

- **Warrant Notice**

Key Concept #3

Appropriation valid only if subject matter appears in warrant (RSA 32:6)

New purposes/line items cannot be added from the floor of the meeting

### **Notice and Amendments**

Voters may amend from the floor (traditional & deliberative session of SB 2)

Line items and separate articles

Proposed budget is advisory only

But voters can't restrict later transfers  
 Alter mode of funding, generally okay  
 However – DRA has disallowed as failure to warn of subject matter:  
     Appropriation to capital reserve fund amended to accomplish purpose this fiscal year  
     Amendment to name CRF agents to expend  
 “Stay at Home” test  
 Traditional meeting – voters can “table”  
 SB 2 – deliberative session cannot delete article entirely, must be presented to voters in some form (cannot “to see”)  
 May not eliminate subject matter of article or make it “a nullity,” RSA 40:13, IV(c)  
 May freely amend dollar amounts

- **No Spending Without An Appropriation**

Key Concept #4

No spending unless that amount was appropriated for that purpose (RSA 32:8)

Exceptions to the Rule

Transfers by governing body, RSA 32:10

Legal judgments ordered by a court

DRA permission to overspend bottom line or add appropriation, RSA 32:11

Prior mandate of federal/state government (welfare, Special Ed)

Spending January 1 until town meeting, RSA 32:13, II (reasonable in light of prior year's approved appropriations and purposes)

Unanticipated revenue (RSA 31:95-b)

Capital Reserve and Trust Funds

Other Funds

    Conservation Fund, Heritage Fund, Recreation Revolving Fund (RSA 35-B)

    Water and Sewer Reserves

    Revolving Funds (RSA 31:95-h)

Collective bargaining agreements

    Need to “Sanbornize”

Multi-year equipment leases

    Without escape/nonappropriation clause it is considered long-term debt, RSA 33:7-e

Other multi-year contracts

    Governing body recommends, voters approve

- **Lapse of Appropriations**

Key Concept #5

Authority to spend lapses at year's end



- Year's end = fiscal year end
- Unspent money goes into fund balance
  - Must be appropriated again, or
  - Used to reduce following year's tax rate, or
  - Retained for emergencies (with DRA okay)
- Fund Balance is the net amount of
  - Unexpended appropriations, plus
  - Excess revenues received; less
  - Uncollected taxes and
  - Liabilities
- Retained Fund Balance
  - Recommendation is 5 to 15% of regular general fund operating revenues; or
  - 8 to 17% of regular general fund operating expenditures
- Exceptions to Lapse Rule
  - Encumbered funds (contracted obligations or special warrant article – very different)
  - Bonds
  - Anticipated grants (RSA 32:7, IV)
  - Capital Reserve Funds (RSA Chapter 35)
  - Trust Funds (RSA 31:19-a)
  - Special Revenue Funds (RSA 31:95-c, d)
  - Revolving Fund (RSA 31:95-h)
- Other Non-Lapsing Funds
  - Conservation Fund – RSA 36-A:4
  - Sewer Fund – RSA 149-1:10 and 35:7
  - Water Fund – RSA 38:29 and 35:7
  - Impact Fees – RSA 674:21, V
  - Recreation Revolving Fund – RSA 35-B:2

- **Transfer of Appropriations**

Key Concept #6

- Governing body may transfer from one “purpose” to another, RSA 32:10
- Not out of special warrant articles
- Public record must be kept
- Cannot overspend the bottom line
- Line item voting – very limited
- Sullivan v. Hampton, 153 N. H. 690 (2006)
  - Affirms governing body's “unfettered” authority to transfer
  - Applied to ordinary operating budget or default budget
  - No limit on the number of transfers
- Failed Separate Articles, “No Means No”
- Purpose deleted, amount zeroed, or failed separate appropriations article, means no appropriation is made for that purpose
  - Spend no money for that purpose

Transfer no money to that purpose

### **Fund Sources**

Reserve Funds (Savings Accounts)  
Lease agreements  
Bonds or Notes  
User Fees  
Special Revenue or Revolving Funds  
Grants  
State Aid  
General Fund Balance  
Property Tax

### **Reserve Funds (Savings Accounts)**

**Expendable Trust Fund** – municipal appropriation for a specified public purpose, usually maintenance and operations, RSA 31:19-a

**Capital Reserve Fund** – municipal appropriation for a specified public purpose listed in statute RSA 35:1, capital items (improvements, acquisition, equipment), land, revaluations, tax maps, extraordinary legal fees, transportation improvement projects, RSA 35:1

Same rules apply, RSA 35:1-c

### **User Fees**

“Specified” service, benefits a specific segment of the population.

“Public” service: benefits the general public, citizens cannot opt out.

Is there statutory authority for the fee? See chart.

What is the appropriate level of cost recovery? 100% reimbursement or a subsidy?

What is the full cost of the service, including both direct and indirect costs?

General fund revenue or accounted for in a special revenue or revolving fund (if allowed)?

### **Special Revenue vs. Revolving Funds**

**Special Revenue Fund** – legislative body votes to restrict revenue, or a portion of revenue, from a specific source to expenditures for a specific purpose, RSA 31:95-c. Limited to activities funded primarily through user fees. Needs an appropriation to expend.

**Revolving Fund** – limited to specific activities: recreation, recycling, ambulance, public safety special details, affordable housing, cable access, energy efficiency. Established by legislative body, but no further appropriation needed.

## **Grants**

Unanticipated revenue per RSA 31:95-b: apply for, accept and expend without further legislative body action

Must not require expenditure of other unappropriated funds

Public notice requirements if less than \$10,000. Public hearing requirements if \$10,000 or more. (2014 law change from \$5,000)

## **General Fund Balance**

Authority to spend lapses at year end

- ❖ Year end – fiscal year end

Fund balance is the net amount of

- ❖ Unexpended appropriations, plus
- ❖ Excess revenues received; less
- ❖ Uncollected taxes and unpaid liabilities

## **How to Use Fund Balance**

- ❖ Retain some for cash flow and emergency expenditures (DRA permission RSA 32:11)
- ❖ Source of revenue for future appropriations
- ❖ Source of revenue to reduce taxes

## **Retained Fund Balance**

- ❖ General Rule: 5 to 15% of regular general fund operating revenues; or 8 to 17% of regular general fund operating expenditures
- ❖ Recommend a fund balance policy

## **Helpful Resources**

Governing Guide to Financial Literacy:  
Connecting Money, Policy and Priorities

## **NHMA Workshops**

Budget & Finance Workshops – September 20<sup>th</sup> & 27<sup>th</sup>  
Law Lecture Series – Fall  
Annual Conference – November 16-17

Mr. Buckley said you can contact them at Legal Inquiries or 800-852-3358 and they generally answer within around 24 hours.

Mr. Jones said he did not believe they could discuss issues related to the budget committee outside of a meeting. The NHMA is happy to entertain questions only off-camera, so I would suggest turning the camera off and continue.

Chairman Bridle said we would have to have the ability to administer minutes for the segment that was not broadcast, if we were still in a meeting without adjourning we would have to have minutes for that, as it would still be a meeting. I would prefer to adjourn the meeting and then ask legal inquiries in regards to the subject matter and have the inquiries where they are town specific kept with attorney/client privilege. I can suggest that any questions be sent to me in writing and I will forward them to NHMA and I can forgo the question/answer session all together. I figured that they are here for us to ask questions; they are a wonderful resource.

**Moved** by Mr. Lapham, seconded by Mr. LaBranche to adjourn the meeting

Chairman Bridle opened the table for discussion.

Mr. Pierce said we do not want to adjourn the meeting because we have a quorum here.

Mr. Pierce MOTIONED to continue the meeting until we are completely finished with the presentation

Ms. Woolsey said it is an illegal meeting

Chairman Bridle said an illegal meeting is not a meeting with counsel; the Board of Selectmen meet with counsel all the time; they do not record those meetings; there are no minutes of those meetings, because it is under attorney/client privilege. I am suggesting this board adjourn the meeting and have a question session with counsel and then move on.

Mr. Jones said in order for there to be attorney/client privilege invocation, there must be an attorney and their client; these people are not our attorneys.

Mr. Buckley said we do have an attorney/client relationship with the Town of Hampton.

Mr. Jones said but not with the Budget Committee

Mr. Buckley said the Budget Committee is part of the Town of Hampton, so all of our communications we have with a community are covered by the attorney/client privilege and when you communicate with us to the legal advisory service or ask us questions in this situation, that is covered by the attorney/client privilege, that is a confidential relationship, there is no doubt about that.

Ms. Burns said just to be very clear, consultation with legal counsel is not a meeting under the Right to Know Law.

V. Adjournment

**Moved** by Mr. Lapham, seconded by Mr. LaBranche to adjourn the meeting and go into a question/answer session with NHMA at 8:40pm

**Vote:** 8 Yes, 3 No (Pierce, Woolsey, Jones) 0 Abstention

Our next tentative meeting is scheduled for June 21<sup>st</sup>, 2016.

Respectfully submitted,

Nicholas Bridle, Chair  
Terry Yeaton, Secretary